**1. Please provide information on any legislation or policy that prohibits or restricts the use of immigration detention of children and their families in your country. Grateful if you could kindly submit the original text of the legislation or policy, accompanied by an English translation if it is in a language other than English, French or Spanish.**

Romania[[1]](#endnote-1) endorsed in 2018 the Global Compact for Migration while some of its neighbours opposed the non-binding agreement. It also has a policy of opposing negative outcomes generated by irregular migration flows such as xenophobia, hate speeches, intolerance and racism.

A step forward in the field of migrants’ rights is that national legislation has been amended and updated as of 2019 as follows:

* Government Emergency Ordinance No. 194/2002 (updated in May 2019)
* Government Emergency Ordinance No. 102/2005 (updated in May 2019)
* Law No. 122/2006 on Asylum (updated in May 2019)
* Government Ordinance 44/2004 on the social integration of foreigners who have acquired international protection or a right of residence in Romania, as well as the citizens of the Member States of the European Union and the European Economic Area (updated in October 2019)

Romanian immigration law does not explicitly mention detention, but it refers to “placement in specially designed closed spaces.” Asylum detention was introduced in 2015 with transposition of the EU Reception Conditions Directive. Children whose age is in question may be detained pending an age assessment. The General Inspectorate for Immigration may establish a place of residence for asylum seekers until the authorities determine whether they are eligible or can take restrictive measures, which must be approved by the prosecutor's office, which consist of administrative detention in "specially designed closed spaces".

Asylum seekers may be detained in such spaces for the following purposes: to verify identity, to establish on which elements the application for international protection is based and to verify if the applicant poses danger to national security, or in case there is information or assumption that the applicant illegally crossed or attempted to illegally cross the state border, or in case he was caught attempting to illegally cross the state border.

Art. 131[[2]](#footnote-1) of Government Emergency Ordinance No. 194/2002 (updated in May 2019) on the status of foreigners in Romania

”Judicial regime applicable to unaccompanied underage foreigners

(1) In the situation of underage foreigners who enter the territory of Romania unaccompanied or who remain unaccompanied after having entered the territory of Romania, if there is no serious doubt on them being minors, the Romanian Immigration Office and its territorial units shall proceed as follows: (…)

b) without regard of the manner in which they have entered Romania, they shall be ensured representation by a competent institution according to the law, which shall also **ensure necessary protection and care, including accommodation in special centres for protection of minors under the same conditions as for Romanian minors;**

c) measures are taken to identify the parents, regardless of their place of residence, for the purpose of family reunification;

d) until the identification of the parents, the minors of school age have access to the education system.

Art. 136[[3]](#footnote-2) of Law 122/2006 (amended in May 2019) on asylum in Romania

Unaccompanied minors, beneficiaries of temporary protection

(1) In the case of unaccompanied minors who enjoy temporary protection, the Romanian Immigration Office will request the competent authorities to name a legal representative in the shortest delay.

(2) Throughout the period of temporary protection the unaccompanied minor may be accommodated:

a) with adult relatives; b) by a hosting family; c**) in reception centers with special facilities for minors or in other forms of accommodation suitable for minors**; d) with the person who took care of the child when they left the country of origin.

(3) In order to apply the provisions of para. (2) it is necessary to obtain the approval of the adult person or of the concerned persons. The opinion of the minor will be taken into account, according to age and maturity.

**2. Please provide information on existing non-custodial alternatives to immigration detention of children in your country (e.g. community-based reception solutions) and elaborate how these alternatives effectively enhance the protection of the rights of migrant children and their families.**

In Romania children who are placed in public custody with their parents are not themselves subject to a public custody order, but they are deprived of liberty in order to be with their parents. However, the placing in custody of migrant children can have negative psychological effects on them and the need to keep the family together does not sufficiently justify depriving the child of liberty.

Detention in public custody centers is constantly subject to review in Romania and should not exceed six months except in certain circumstances, in which case detention may be extended up to 12 months. Applicants or those who benefit from international protection in certain circumstances, especially those declared "undesirable" for reasons of national security may be subject to administrative detention in public custody centers.

According to art. 101 of the Government Emergency Ordinance no. 194/2002 on the regime of foreigners, the General Inspectorate for Immigration - as the competent body in the matter, “analyzes the opportunity of maintaining the measure of being taken into public custody, at intervals of maximum 3 months. In the case of families with minors taken into public custody, the analysis is carried out at intervals of maximum one month”.

The measure of public custody is not actually taken against the children accompanying the family members or the legal representative; it is considered that they are "lodged" with the family to preserve the principle of fundamental law of family unity, therefore they have a different legal regime. Neither the General Inspectorate for Immigration nor prosecutor can take the measure of public custody through a motivated ordinance of the accompanied minors. It should also be mentioned that according to art 104 (6) minors admitted to centers accompanying at least one of the parents or the legal representative, taken into public custody, have free access to the compulsory education system.

Law 122/2006 on asylum in Romania establishes the legal regime of foreigners requesting international protection in Romania, the legal regime of foreign beneficiaries of international protection in Romania, the procedure for granting, termination and cancellation of international protection in Romania, the procedure for establishing the Member State responsible for analyzing the asylum application, as well as the conditions for granting, exclusion and termination of temporary protection.

The measure of public custody is regulated by art. 19^13: Public custody measure (1) An applicant for international protection can be taken or, as the case may be, kept in public custody, in the cases provided by the Government Emergency Ordinance no. 194/2002 on the regime of foreigners in Romania, republished, with subsequent amendments and completions, as well as in the following situations: a) within the procedure for determining the responsible Member State, in order to ensure the transfer to the responsible Member State; b) if the applicant has been taken into public custody for removal or expulsion from the Romanian territory and has filed an application for international protection to delay or prevent the implementation of the removal or expulsion measure, although prior to such disposition measures had the opportunity to file such a request. (2) The public custody of the applicants for international protection may be disposed of if, by prior evaluation, the possibility of applying the measures provided for in art. 19^2 para. (1) a) and b) is not possible and sufficient by reference to the procedure through which they would be applied and the scope that would be pursued by taking the measures.

In the case of migrant minors other than asylum seekers, the provisions of art. 106^1 of the Government Emergency Ordinance 194/2002 on the regime of foreigners, republished in 2019, with subsequent amendments and completions, regulate the institution of tolerance.

In the case in which the unaccompanied minor did not submit an application for international protection, or his asylum application was rejected following the completion of the asylum procedure provided in art. 17 paragraph 7). of Law 122/1996 on asylum in Romania, the General Directorate of Social Assistance and Child Protection which is competent according to the legislation in force undertakes the steps provided by law for establishing a special protection measure for the minor and informs the General Inspectorate for Immigration regarding the situation of the minor.

Other relevant legislation on public custody:

Order of the Ministry of Internal Affairs 121/2014 for approving the Regulation of accommodation centers of foreigners taken into public custody and published in the Official Gazette, Part I, no. 590 of 08.08.2018 - Annex no. 2

Emergency Government Ordinance 194/2002 on the regime of foreigners in Romania and the Methodological Norm for the application of Law 122/2006 on Asylum in Romania

Excerpts of law provisions:

Law 122/2006 on Asylum in Romania

ARTICLE 5^1

**The situation of vulnerable people**

    (1) The application of the provisions of the present law is carried out taking into account the special needs of vulnerable persons.

    (2) In the category of vulnerable persons are included minors, unaccompanied minors, persons with disabilities, older persons, pregnant women, single parents accompanied by their minor children, victims of human trafficking, persons suffering from serious illnesses, persons with mental disorders and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence, or in other special situations.

    (3) For the purposes of this law, belonging to the category of vulnerable persons shall be determined after the application for asylum, as soon as possible, by specialists from the General Inspectorate for Immigration, based on an individual evaluation. In order to carry out the individual evaluation and to take appropriate measures to ensure the rights and guarantees provided by this law, the competent authorities grant specialized support, at the request of the General Inspectorate for Immigration.

ARTICLE 8

**The best interest of the child**

    In applying the provisions of the present law, all decisions regarding minors are made with the respect of the best interests of the child.

ART. 16 Guarantees regarding unaccompanied minors seeking asylum (1**) The asylum application of an unaccompanied minor is analyzed with priority.**

(2) The General Inspectorate for Immigration shall take measures to appoint, as soon as possible, a legal representative to assist the unaccompanied minor asylum seeker during the asylum procedure(,,,)

(2^1) The unaccompanied minor is informed immediately of the appointment of the legal representative. The legal representative fulfills his duties in accordance with the principle of the best interests of the child and has the necessary expertise for this purpose.

(4) The General Inspectorate for Immigration […] c) informs the legal representative and the unaccompanied minor asylum seeker, in a language the latter understands or reasonably assumes that he understands, regarding the possibility of carrying out a forensic age assessment. This information should also include details on the methods of medical examination, the possible consequences of the result of this examination and the effects of the eventual refusal to submit to the forensic expertise.

(4 ^ 1) The forensic age assessment is carried out with the full respect of the individual dignity of the minor, using the least invasive methods, which will allow, as far as possible, a reliable result. (5) In order to apply the provisions of this article, the General Inspectorate for Immigration collaborates with the structures of the local public administration authorities with responsibilities in the field of protection and promotion of the rights of the child, as well as with the competent courts, as the case may be, in order to clarify the legal situation of the minor. or if a special protection measure has been instituted against it.

ART 17

(1) p) the right of minor asylum seekers to have access to compulsory pre-preschool, and school education, under the same conditions as Romanian minors, unless a measure of removal of them or their parents from the territory of Romania is implemented. ;

Art. 17 (4) Minors benefit from the same protection offered, under the law, to Romanian minors in difficulty

**Art.78 of Law no. 272/2004 on the protection and promotion of the rights of the child**

(1) Until the definitive and irrevocable solution of the request for granting refugee status, the accommodation of the children provided in art. 77 is **performed in a residential type service provided by this law, belonging to the general social assistance and protection of the child or to an authorized private body.**

(2) Children who have reached the age of 16 may also be **accommodated in the reception and accommodation centers,** which are subordinated to the General Inspectorate for Immigration.

(3) The children mentioned in par. (1), who have been granted refugee status, benefit from the special protection of the missing child, temporarily or permanently, from the protection of his parents, provided by the present law.

ART. 79 of Law no. 272/2004 on the protection and promotion of the rights of the child

(1) In the situation where the request of the child provided in art. 76, granting refugee status, is definitively and irrevocably rejected, the general directorate of social assistance and child protection notifies the General Inspectorate for Immigration and asks the court to establish the placement of the child in a special protection service.

(2) The placement measure lasts until the return of the child to the parents' country of residence or to the country where other family members willing to take the child have been identified.

The Foundation Terre des Hommes published in 2019 the study **“Alternatives to placing in the public custody of unaccompanied or accompanied migrant children in the context of asylum and migration”,** which provides recommendations for alternatives to public custody.

**3. Please provide information on any existing good practices or measures taken in your country to protect the human rights of migrant children and their families while their migration status is being resolved, including inter alia their rights to liberty, family life, health and education(e.g. by ensuring effective access to inter alia adequate reception, healthcare, education, legal advice, family reunion).**

The Emergency Transit Centre in Timișoara marks its 12th anniversary this year. It has proven to be a model of good practice and a useful tool of international protection with more than 3000 persons having benefited of its assistance. [[4]](#footnote-3)

In 2018 the Children Ombudsman was established in Romania. Thus Romanian became the 36th European country with an independent institution exclusively dedicated to the protection of the rights of the child.

**THE IOM Romania project REACT\_RO: educational resources for migrant orientation and Romanian language courses in Romania - second phase.** The International Organization for Migration (IOM), Office in Romania, in partnership with the Intercultural Institute in Timisoara and the Schottener Social Services Foundation, have implemented the REACT\_RO project between July 2017 and January 2019: educational resources for migrant orientation and Romanian language courses in Romania. [[5]](#footnote-4)

The Romanian National Council for Refugees issued an information leaflet with rights and obligations of the asylum seekers placed in closed spaces providing answers to frequently asked questions and all necessary information, contact points of reception and accommodation Centers in the country.[[6]](#footnote-5)

Universitatea de Vest Timișoara (Western University) signed a protocol with UNCHR to offer scholarship to refugees. It was the first University in Eastern Europe to grant a scholarship to a young Afghan student in the autumn of 2019. Fareshta Basim, 23, studies informatics and was the first beneficiary of this type of scholarship[[7]](#footnote-6)

The Terre des Hommes study **”Alternatives to placing in the public custody of unaccompanied or accompanied migrant children in the context of asylum and migration”, 2019**, is a working instrument for legal practice and it was achieved under the project Safe not detained funded by the European Program for Integration and Migration (EPIM), a joint initiative of the Network of European Foundations (NEF) and the H&M Foundation in partnership with Initiatives for Children in Migration, Missing Children Europe and PICUM. The study offers a series of recommendations for alternatives to placing in public custody[[8]](#footnote-7).

**4. Please indicate any challenges and/or obstacles in the development and/or implementation of non-custodial alternatives to immigration detention of children and their families**

There is a need for closer collaboration with child protection institutions. It is difficult to identify family residential placements of unaccompanied minors, but also NGOs can be more involved in identifying and proposing new solutions. A challenge is also the situation of the migrant minor until their age is determined. It is necessary to modify legislation regarding the possibility to be considered as being a minor until the age is determined. Another challenge is the lack of official interpreters/translators. There are occasions when NGOs are offering these services. The legal assistant sometimes reaches the respective migrant too late to be able to communicate for preparing the file and offer proper assistance. Some of the assistance procedures should be simplified.

**5. What support could other stakeholders (other than your Government) provide to strengthen the development and/or implementation of non-custodial alternatives to immigration detention of children and their families that enhance the protection of their rights?**

As highlighted above, civil society (Save the Children, one of the most active NGOs in the field of children’s rights) and international organizations (UNHCR and IOM) are already advocating for alternatives to public custody and/or detention. As a result, amendments were made in the legislation with regard to the best interest of the child and to the situation of vulnerable categories and they will continue their efforts to suggest further positive changes. The involvement of the business community with respect to assistance to refugees and migrants would also be of great help. The Romanian Institute for Human Rights acts as a liaison point between the authorities, the representatives of Civil Society and of international organization advocating for further harmonization of national legislation with European and international standards.

1. Answers are also based on information received from the Romanian National Council for Refugees [↑](#endnote-ref-1)
2. “Art. 131 - Regimul juridic aplicabil străinilor minori neînsoţiţi:

   (1) În situaţia străinilor minori care intră neînsoţiţi sau care rămân neînsoţiţi pe teritoriul României, atunci când nu există dubii serioase cu privire la minoritatea acestora, Inspectoratul General pentru Imigrări şi formaţiunile sale teritoriale procedează după cum urmează: (…) b) indiferent de modul de intrare în România, li se asigură reprezentarea printr-o instituţie competentă potrivit legii, care le va asigura şi protecţia şi îngrijirea necesare, inclusiv cazarea în centre speciale de ocrotire a minorilor în aceleaşi condiţii ca şi pentru minorii români; se iau măsuri de identificare a părinţilor, indiferent de locul de reşedinţă al acestora, în scopul reunificării familiale; d) până la identificarea părinţilor, minorii de vârstă şcolară au acces la sistemul de învăţământ” [↑](#footnote-ref-1)
3. ART. 136 Minorii neînsoţiţi, beneficiari ai protecţiei temporare - (1) În cazul minorilor neînsoţiţi care se bucură de protecţie temporară, Oficiul Român pentru Imigrări va solicita autorităţilor competente numirea unui reprezentant legal în cel mai scurt timp. (2) Pe perioada protecţiei temporare minorul neînsoţit poate fi cazat: a) cu rude adulte; b) cu o familie gazdă; c) în centre de primire cu facilităţi speciale pentru minori sau în alte forme de cazare potrivite pentru minori; d) cu persoana care a avut grija de copil când a părăsit ţara de origine. (3) În vederea aplicării dispoziţiilor alin. (2) este necesar acordul persoanei adulte sau al persoanelor în cauză. Opinia minorului este luată în considerare, în funcţie de vârstă şi de maturitatea acestuia. [↑](#footnote-ref-2)
4. <https://www.unhcr.org/events/conferences/5dfa3d524/statement-from-romania.html?query=Romania%202020> [↑](#footnote-ref-3)
5. <https://oim.ro/en/what-we-do/programs> [↑](#footnote-ref-4)
6. <https://www.cnrr.ro/index.php/ro/blog-ro-2/procedura-de-azil/254-drepturi-si-obligatii-ale-solicitantilor-de-azil-plasati-in-spatii-inchise-en> [↑](#footnote-ref-5)
7. <https://www.unhcr.org/ro/5813-studenta-refugiata-din-afganistan-castiga-o-bursa-din-partea-unei-universitati-romanesti.html> [↑](#footnote-ref-6)
8. <https://childhub.org/ro/biblioteca-online-protectia-copilului/alternative-la-plasarea-custodie-publica-copiilor-migranti> [↑](#footnote-ref-7)